

Subj: **Vermont Police Report and Public Records Request Order**
Date: 9/7/2010 4:41:35 PM Eastern Daylight Time
From: portal-support@vermont.nicusa.com
To: johnfrancolaw@aol.com
Sent from the Internet (Details)

Thank you for using Vermont's Online Police Report and Public Records Ordering Service.

Your order for the following documents has been successfully submitted to the Department of Public Safety (DPS).

Transaction Date: 09/07/2010 16:40:25

Reference Number: 24910163955-W

Customer (Name on Credit Card): John L. Franco

Order Summary:

DUI Video \$45.00

Total Amount Charged: \$45.00

The DPS Information Officer has received your order and is making every effort to get the information you requested to you in a timely manner. You will receive another e-mail when the status of your order has changed. You may also check on the status of your order at any time via the Internet at:
<https://secure.vermont.gov/DPS/publicrecords/status.php>

The charge on your credit card will say "Vermont Government Services".

Thank You,
Vermont Police Reports and Public Records Ordering Service

A handwritten signature in black ink, appearing to read "John L. Franco".

Subj: **Vermont Police Report and Public Records Request Order Status Change**
Date: 9/8/2010 9:17:19 AM Eastern Daylight Time
From: portal-support@vermont.nicusa.com
To: johnfrancolaw@aol.com
Sent from the Internet (Details)

Your order through the Vermont Police Report and Public Record Ordering system has been updated by the Department of Public Safety. The status of each document you ordered is:

Document	Status
DUI Incident Video	Order Accepted and In-Process

You may check on the status of your order at any time via the Internet at:
<https://secure.vermont.gov/DPS/publicrecords/status.php>

Thank You,
Vermont Police Reports and Public Records Ordering Service

Subj: **Vermont Police Report and Public Records Request Order Status Change**
Date: 9/14/2010 12:50:52 PM Eastern Daylight Time
From: portal-support@vermont.nicusa.com
To: johnfrancolaw@aol.com
Sent from the Internet (Details)

Your order through the Vermont Police Report and Public Record Ordering system has been updated by the Department of Public Safety. The status of each document you ordered is:

Document	Status
DUI Incident Video	Fulfilled and Shipped

You may check on the status of your order at any time via the Internet at:
<https://secure.vermont.gov/DPS/publicrecords/status.php>

Thank You,
Vermont Police Reports and Public Records Ordering Service

**VERMONT DEPARTMENT OF PUBLIC SAFETY
PUBLIC RECORD REQUEST**



Requestor John Franco	Case # 09A304607	Check # Online Payment REFUNDED	Date 9/15/2010
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We are unable to fulfill your request for the following reason:

- In order to process your request, payment is required. Please submit the following payment. (Checks should be made out to the Department of Public Safety) Amount Due: \$20 per report / \$20 per photo disc.
- The information you requested is a record dealing with the detection and investigation of a crime including those maintained on any individual or compiled in the course of a criminal investigation by a police agency. For more information, please refer to 1 VSA § 317 (c) (5) or visit www.leg.state.vt.us/statutes/statutes2.htm
- The report you requested is not a Vermont State Police case, you should contact:
- A Vermont State Police report number was not provided.
- Other: We have been unable to locate any photographs taken in relation to this case. It does not appear any were taken. Our apologies for any confusion this may have caused.

Under no circumstances will autopsy reports be released by the Department of Public Safety.

If your document request has been denied, you may appeal the denial to:

Thomas Tremblay, Commissioner
Department of Public Safety
103 S. Main Street
Waterbury, VT 05671-2101

LAW OFFICES
OF
JOHN L. FRANCO, JR.

110 Main Street, Suite 208
Burlington, Vermont 05401-8451
Telephone (802) 864-7207 FAX (802) 859-1876
Email: Johnfrancolaw@aol.com

September 24, 2010

Hon. Thomas Tremblay, Commissioner
Department of Public Safety 103 S. Main Street
Waterbury, VT. 05671-2101

Re: Appeal of Denial of Release of DUI Tape, Case # 09A304607

Dear Commissioner Tremblay,

On November 13th, 2009 the Vermont State Police arrested and processed Vermont Auditor of Accounts Thomas M. Salmon for driving under the influence in the City of Montpelier. Mr. Salmon was prosecuted, he pleaded guilty, and that case is now closed.

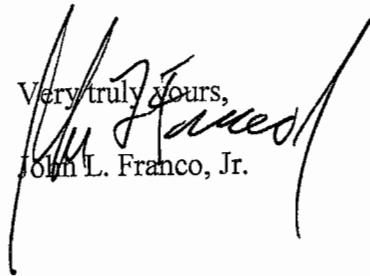
The State Police made a video recording of the initial stop and arrest of Mr. Salmon. On September 7, 2010 I requested a copy that video using the Department of Public Safety's "Online Police Report and Public Records Ordering Service." On September 7, 2010 I received an email confirmation that the request "had been successfully submitted to the Department of Public Safety." On September 8, 2010 the plaintiff received an email confirmation from the Department of Public Safety that "Order Accepted and In-Process." On September 14, 2010 I received an email confirmation from the Department of Public Safety "DUI Incident Video Fulfilled and Shipped."

However this past Tuesday September 21 I received a notification by first class mail dated September 15, 2010 that the video was claimed to be exempt pursuant to 1 V.S.A. § 317(c)(5) and the online payment had been refunded, with instructions to appeal this denial to you. I appeal to you as instructed.

I do so on grounds that the video is a "record" as defined by 1 V.S.A. §317(b) "reflecting the initial arrest of a person" and is therefore outside the scope of the exception of § 317(c)(5) which must be strictly construed in favor of public disclosure. *Trombley v. Bellows Falls Union High School*, 160 Vt. 101, 108-09 (1993). *Kade v. Smith*, 2006 VT 44 ¶8.

Your Department also has a past practice of releasing videos of stops by State Troopers, most notably the release of the video of a stop in August of 2010 of Sen. Peter Shumlin on Interstate 91 to Kristin Carleson of WCAX-TV who then aired it in a news broadcast. The withholding of the DUI video of Auditor Salmon is a selective application of the exception with First Amendment implications that violates of equal protection of the law, and thereby violates

the federal civil rights act. 42 U.S.C. § 1983.


Very truly yours,
John L. Franco, Jr.



State of Vermont
Department of Public Safety
103 South Main Street
Waterbury, Vermont 05671-2101
www.dps.state.vt.us

September 29, 2010

John L. Franco Jr., Esq.
110 Main Street, Suite 208
Burlington, Vermont 05401-8451

Re: Appeal of Denial of Release of DUI Tape, Case #09A304607

Dear Mr. Franco,

I received your appeal on September 27, 2010 but did not actually review it until today (I had been out of the office).

On September 7, 2010 you requested a copy of the video recording of the DUI investigation of Thomas Salmon (incident 09A304607). On September 15, 2010 that request was denied based upon 1 V.S.A. 317 (c) (5). I apologize for the confusion regarding the message you received on September 14, 2010.

I have read and considered your letter of appeal. The record you seek is a recording of the trooper's motor vehicle stop, investigation (such as the road side tests and processing) of the DUI involving Mr. Salmon. While it also depicts Mr. Salmon being handcuffed it is not a record, such as an arrest warrant or citation, which is in fact a record reflecting the initial arrest.

I am denying your appeal pursuant to 1 V.S.A. 317 (c) (5) the record you seek is a record dealing with the detection and investigation of a crime including those maintained on an individual or compiled during the course of a criminal investigation by the Vermont State Police.

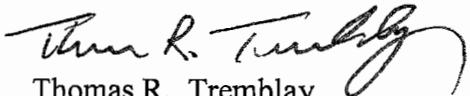


September 29, 2010

Page 2.

Though not relevant to the appeal I will respond to your concern that I am somehow treating Mr. Salmon differently than Mr. Shumlin. Mr. Shumlin was stopped for a civil violation and not a criminal violation and therefore the record is not exempt pursuant to 1 V.S.A. 317 (c) (5). Mr. Shumlin also spoke to me in connection with the request (from a media professional) to release the video of the interaction between Mr. Shumlin and the trooper. During that conversation Mr. Shumlin encouraged me to release the video recording.

Sincerely,



Thomas R. Tremblay

Commissioner

Tara Thomas

From: Tebbetts, Anson [tebbetts@wcax.com]
Sent: Thursday, June 24, 2010 4:08 PM
To: Tara Thomas
Subject: RE: Speeding Ticket

and what is the deal on folks driving over 100 now....i think we need to do a story on this....

thanks for looking into...

-----Original Message-----

From: Tara Thomas [mailto:tthomas@dps.state.vt.us]
Sent: Thursday, June 24, 2010 4:07 PM
To: Tebbetts, Anson
Subject: RE: Speeding Ticket

Hi Anson,
I'm still looking into this.
Tara

Sgt. Tara Thomas
Public Information Officer
Vermont State Police - Headquarters
103 South Main Street
Waterbury, VT 05676-2101
Office: 802-241-5277
Cell: 802-999-7687
Fax: 802-241-5551

From: Tebbetts, Anson [mailto:tebbetts@wcax.com]
Sent: Thursday, June 24, 2010 1:14 PM
To: Tara Thomas
Cc: Waterman, Scott; Carlson, Kristin; Hinkel, Christine
Subject: Speeding Ticket

Sgt.

We understand Sen. Peter Shumlin may have received a speeding ticket recently.
We also are exploring whether he tried to avoid the ticket by flashing his Senate ID...

thanks
Anson

Tebbetts@wcax.com

Anson Tebbetts
News Director
WCAX-TV
PO Box 4508
Burlington, VT 05406
802-652-6360

From: Tara Thomas
Sent: Friday, June 25, 2010 1:40 PM
To: Tebbetts, Anson
Cc: carlson@wcax.com
Subject: RE: Speeding Ticket

Hello Anson,

In response to your email :

Senator Shumlin was issued a Vermont Civil Violation Complaint ("speeding ticket") for speeding 81 MPH in a 65 MPH zone on Interstate 91 in Fairlee. This is a 2 point violation with a fine of \$152.00. The ticket was issued by the Vermont State Police. The date and time of the stop was June 17, 2010, at 10:30 PM. The Trooper that wrote the ticket is on days off and we have been unsuccessful contacting him to inquire if Senator Shumlin attempted to avoid the ticket during the motor vehicle stop "by flashing his Senate ID." Regardless, at the time of the stop, it is clear that we issued the ticket.

We are reviewing the administrative processing of the ticket following the issuance of the ticket, but we are unable to comment on that.

Please contact Commissioner Tremblay if you have any further questions.

Respectfully,
Tara

Sgt. Tara Thomas
Public Information Officer
Vermont State Police - Headquarters
103 South Main Street
Waterbury, VT 05676-2101
Office: 802-241-5277
Cell: 802-999-7687
Fax: 802-241-5551

From: Tebbetts, Anson [mailto:tebbetts@wcax.com]
Sent: Thursday, June 24, 2010 1:14 PM
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Cc: Waterman, Scott; Carlson, Kristin; Hinkel, Christine
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Sgt.

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We also are exploring whether he tried to avoid the ticket by flashing his Senate ID...

thanks
Anson

Tebbetts@wcax.com

Anson Tebbetts
News Director
WCAX-TV
PO Box 4508
Burlington, VT 05406
802-652-6360

Walter Goodell

From: Walter Goodell
Sent: Monday, June 28, 2010 1:37 PM
To: tebbetts@wcax.com
Cc: Walter Goodell
Subject: Video

Good afternoon Mr Tebbetts,

I know that you have been speaking with Sgt Tara Thomas our public information officer regarding a video copy.

I just learned that Kristin Carlson will be stopping by VSP HQ this afternoon to pick up that video.

I will make sure that Ms Carlson receives the video, as Sgt Thomas is not in today.

Regards,

Maj. Walt Goodell/VSP

Walter Goodell

From: Walter Goodell
Sent: Monday, June 28, 2010 1:41 PM
To: Tebbetts, Anson
Subject: RE: Video

The format is DVD +R.

From: Tebbetts, Anson [mailto:tebbetts@wcax.com]
Sent: Monday, June 28, 2010 1:40 PM
To: Walter Goodell
Cc: Carlson, Kristin
Subject: RE: Video

Major.
Thanks.
Kristin is scheduled to stop by headquarters around 2:30.
Do you know what format the video is in?

Thanks
Anson

-----Original Message-----

From: Walter Goodell [mailto:wgoodell@dps.state.vt.us]
Sent: Monday, June 28, 2010 1:37 PM
To: Tebbetts, Anson
Cc: Walter Goodell
Subject: Video

Good afternoon Mr Tebbetts,

I know that you have been speaking with Sgt Tara Thomas our public information officer regarding a video copy.

I just learned that Kristin Carlson will be stopping by VSP HQ this afternoon to pick up that video.

I will make sure that Ms Carlson receives the video, as Sgt Thomas is not in today.

Regards,

Maj. Walt Goodell/VSP